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NO. 313

313

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

COMMISSIONER OF INTERNAL REVENUE

v.

W. O. CULBERTSON, SR.

AND

GLADYS CULBERTSON

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

## BRIEF FOR THE RESPONDENT IN OPPOSITION

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COMMERCIAL RECORDER, FORT WORTH, TEXAS, 10-2-48—100

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## BRIEF FOR THE RESPONDENT IN OPPOSITION

### Opinions Below

The memorandum opinion of the Tax Court (R. 115, 142) is not officially reported. The unanimous opinion of the Court of Appeals (R. 181, 188) is reported in 168 F. 2d 979.

### Jurisdiction

The judgment of the Court of Appeals was entered on June 30, 1948 (R. 188). The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

## Question Presented

Did the Court of Appeals err in holding that Respondent Culbertson was not to be taxed upon the profits of a partnership interest formerly belonging to one Coon—unrelated to the Culbertsons—who had retired from the partnerhip of Coon & Culbertson upon condition that the Culbertson boys acquire his interest, take his place in the partnership, and carry on the cattle breeding program he had originated thirty-seven years previously.

## Statutes And Regulations Involved

These are set out in the Appendix, *infra*, pp. 19-20.

## Statement

The controlling and undisputed facts, which distinguish this case from other family partnership cases cited by Petitioner are, in summary: the interest in the partnership property producing the income Petitioner seeks to tax to Respondent Culbertson did not come from Respondent—as was true in the *Tower* and *Lusthaus* cases—but from Respondent's original partner, one R. S. Coon, unrelated to the Culbertson family; the transactions which Petitioner seeks to treat as tax-motivated transfers from a parent to his children were in reality transfers from Coon; the result, from the standpoint of the Culbertson family, was to increase, rather than decrease, tax liability and taxable income. Briefly, the pertinent facts are these:

R. S. Coon, unrelated to the Culbertsons, wealthy, childless, and eighty, after having spent forty years (twenty-five with Respondent in the equal partnership of Coon & Culbertson) in building a superior strain of Hereford cattle, the cream of which was included in 1939 in the partnership brood herd, was directed to retire from business activities and the partnership was put in liquidation (R. 72, 74, 135). Practically all partnership cattle (including "grade" and Brafords), except the brood herd, were sold in due course (R. 74, 103). When the time came to dispose of that herd,[1] in October 1939, Coon rejected Respondent's offer to buy the Coon interest for his own account, but proposed to sell to Respondent, at what clearly was a bargain price,[2] on condition that Respondent would transfer this interest at the same price to Respondent's four sons and allow them to step into his shoes in the partnership.[3] Respondent and

[1]Coon was intensely interested in the continued upbreeding of the brood herd and concerned about its future; he considered Respondent too old to carry out that program alone; and he concluded that the Culbertson boys were the appropriate persons for that task because of age (W. O., Jr., who was twenty-four years old in 1940 and married, Richard, twenty-two and married, Joe Jack eighteen, and Eugene sixteen (R. 92)) and ability (R. 75, 106). From the time each was twelve; the Culbertson boys had worked on the ranch when not in school, a practice which was continued until they went into the Army in 1941 and 1942 (R. 74, 87). All were man-sized, capable of doing a full ranching day's work and entirely familiar with all phases of cattle raising (R. 73, 74, 87, 93).

[2]This price was the average per head price of all prior sales, which included sales of registered Herefords, grade cattle and Brafords (R. 73, 81).

[3]Every person present at the time of this transaction, living at the time of trial, so testified: (R. 72-3; R. 75; R. 90, 107).

the Culbertson boys accepted this proposal,[4] and with the interest so acquired from Coon, the Culbertson boys entered into a partnership (W. O. Culbertson & Sons)[5] with their father, the interest of the Culbertson boys (one-eighth each) aggregating one-half and Respondent's interest continuing to be, as it had been with Coon, one-half. It is the profit from the former Coon interest, arising from sales of cattle,[6] which Petitioner seeks to tax to Respondent.

Another somewhat unusual fact (one to which Petitioner and the Tax Court attached great and—we believe with the Court below—undue importance) is that, after appropriate conveyances from Coon via Respondent to the Culbertson boys,[7] and after W. O. Culbertson & Sons had begun operating,[8] Respondent,

[4]"Well, son, Mr. Coon wants to sell his interest in the cattle to you four boys" (R. 107).

[5]All were to share in profits according to their ownership; "no individual to have any more right than the other but we'd all have the right to manage the ranch" (R. 90, 108).

[6]In 1940 and 41 all of the partnership income was from cattle (R. 95). The partnership owned no land (R. 102).

[7]At the instance of W. H. Coon (R. 76, 107), R. S. Coon's nephew and local manager, rather than Coon conveying directly to the boys, the partnership of Coon & Culbertson conveyed the full title to Respondent and Respondent conveyed an undivided one-half interest to the Culbertson boys, with no strings attached, the latter giving Respondent a joint note, later increased when additional cattle and the ranch equipment were purchased, due in one year with four per cent interest (R. 76, 92, 109). No gift was intended and it was definitely understood that the note was to be repaid (R. 90, 92, 109).

[8]The formation of W. O. Culbertson & Sons was widely publicized (R. 77, 135). The Coon & Culbertson certificate of membership in the American Hereford Association was trans-

at the instance of the manager, Wright, of the finance company which had previously extended credit to Coon & Culbertson and from which W. O. Culbertson & Sons was seeking an indispensable continuance of this credit, executed an instrument which, if it can be classified, may be called a conveyance of the property which had already been unconditionally conveyed to the Culbertson boys, and a limited partnership with respect to the ordinary partnership previously formed by Respondent and his sons.[8] This instrument, the terms of which were formulated without suggestion from Respondent, was furnished to the credit company and satisfied it (R. 114,115). The provisions of this instrument to which the Tax Court and the Petitioner attach great importance, are those which purport to place in Respondent a very large measure of control over the joint affairs. But the undisputed evidence established that Respondent did not dictate or suggest the terms of the instrument (R. 114), that

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ferred to W. O. Culbertson & Sons (R. 77, 110), partnership books were established and a bank account opened upon which all partners could check (R. 93, 94, 101), and in November 1939, the new partnership took possession of the cattle (R. 75).

[8]Wright directed Respondent to get a lawyer to draw up a paper which would enable the partnership to pledge the interest of the two minor sons in the cattle as security for loans; Respondent turned the matter over to the local Dalhart, Texas lawyer, Stallcup, and that lawyer, on his own initiative, drew up a document dated December 8, 1939, which Respondent signed, after it was read to him, and sent to Wright (R. 113, 115).

while it was read to him he did not appreciate its meaning,[10] that it was executed without the knowledge, consent or joinder of any of the Culbertson boys (R. 96,126) and it remained unknown and unnoticed until Respondent displayed it to an Internal Revenue Agent (R. 115, 116); whereupon, in an appropriate suit brought by the Culbertson boys at the suggestion of an accountant procured by Wright of the credit company, it was declared void *ab initio* (R. 96, 116, 145). The Court below refused to attach any significance to this document, holding in substance that the prior completed conveyance and partnership agreement could not be set aside by such ex parte action and instrument (R. 185).

Other factors of more or less significance in this father-sons partnership are:

The father, upon inquiry from the sons, agreed to and did finance the purchase (R. 88, 98, 107), paying Coon in cash and taking his sons' joint note for the equivalent amount, the note being later increased to $57,674.80 when the new partnership purchased the ranch equipment (R. 93); the father forgave in later years approximately two-fifths of this note and the

[10]Respondent, whose schooling had ended at the eighth grade, thought the paper was something necessary in connection with loans and did not realize that it might affect the partnership until so advised by an Internal Revenue Agent several years later (R. 115, 127), and for that reason he did not advise the Culbertson boys of its existence until 1943, when all of the boys were in the Army (R. 96, 116, 126); it was never filed of record, none of its terms were ever carried out and, other than sending it to the credit company, no use was made of it (R. 115, 127).

Remainder was paid to Respondent from the sons' shares of partnership profits (R. 96, 129). This financing was not essential to the program: Coon, who had sent the two eldest Culbertson boys through Animal Husbandry courses in college and left money at his death in 1943 for the college educations of the younger sons (R. 86, 104), volunteered to carry them for the purchase price (R. 91).

The sons were active in the business[11]—in which each had been trained since early childhood—except when their activities were interrupted by school attendance and military service (R. 95, 103, 110). The younger sons' absence for educational purposes was in furtherance of a longe range program[12] in which the sons agreed to equip themselves to carry on the business more effectively and return

[11]By the partnership agreement, Respondent—who had sustained a broken hip and was unable to do ranch work and hence lived in Dalhart, Texas, some ninety miles from the leased ranch—was to be primarily responsible for maintaining contacts with the partnerships' customers, selling cattle and arranging loans (R. 97, 100). W. O., Jr., who by experience and education was eminently fitted, was to have general supervision of all cattle raising and ranching activities and, in addition, was to be primarily responsible for perhaps the most vital phase of the business—breeding (R. 79, 95).

[12]Shortly following the formation of the partnership it was agreed that the younger brothers would best serve the partnership by completing their educations and thus equipping themselves to handle special phases of the business and, in the meantime, to devote their free time under the supervision of W. O. Jr., to necessary ranch work, tattooing, and maintaining the voluminous and meticulous records necessary in the certification of blood lines of all offspring (R. 94). During the tax years these plans were carried out—Respondent and W. O.

to it. The partnership was not a temporary affair (R. 78, 106) and the burden of personal services could be expected to change from year to year.

The father did not dominate partnership activities; he did not attempt to dictate the policies or direct the operation of the ranch and, in fact, he went to the ranch only about once a month (R. 95, 111, 129). Each son was a true partner and many of the more vital phases of the business were under the direct and exclusive control of one or more of the sons—ranch supervision, identifying offspring, maintenance of blood lines records, etc. (R. 85, 94, 95, 111).

Respondent, in late 1940, sold a one-eight interest out of his one-half interest to his daughter, Fannie, taking her note which was later forgiven as a gift. Respondent did not and does not claim Fannie as a partner for tax purposes.

In all of the transactions involving the sales of the cattle and the formation of the partnership, taxes were never mentioned, nor did taxes have a bearing upon what was done; no attorney or accountant was consulted; Respondent did not realize that tax considerations would be important (R. 80, 97, 112). Other than by signing income tax returns prepared by others, Respondent had had no tax experience (R. 111).

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Jr. working full time, and the other three boys during weekends and in the summer (R. 95, 103, 110, 118)—until interrupted by the war.

As Petitioner makes no contention that the evidence fails to support the action of the Court of Appeals, and as this was a father-son partnership of the type so well known and traditional in the cattle business,[1] it is considered unnecessary to further summarize the details of the partnership's operations as shown by the evidence.

## Argument

1. In urging that the decision of the Court of Appeals is wrong and repugnant to the *Tower* and *Lusthaus* cases, the Government is put in the unsupportable position of having to rely upon what it claims is void. For its petition to have any standing, the Government must establish that, but for the partnership it decries, Respondent would have been taxable on the income from that interest. The record gives no support for its position—even speculatively. The controlling facts are not contradicted: (1) The income in question—one half of the total partnership income— came from the one-half interest formerly belonging to Coon; (2) Prior to the October, 1939 transaction, Respondent had no interest in Coon's one-half interst; (3) Respondent tried to purcase Coon's int. rest for his own account

[1] Wright testified that in his experience, one out of every ten cattle partnerships was a father and son arrangement; that such partnerships are traditional in the cattle business because the joinder of youth and age supplies the prerequisites—physical hardihood and judgment; that, as confidant and adviser to cattlemen, he constantly recommends father and son partnerships with attendant purchases on time or gifts because this step strengthens the business and opposes the trend of young men going to urban employment (R. 81, 84).

and failed; (4) Respondent took temporary title to Coon's interest, as a conduit, charged with the obligation to pass it on to his sons, and when he passed it on and engaged in the resulting partnership he merely fulfilled a binding obligation; Respondent was never morally or legally a true owner of the Coon interest; (5) The Coon-Culberson contract is not divisible into a purchase by Respondent and a conveyance by him to his sons—for Coon conditioned the former upon the occurrence of the latter—but if it should be divided, then the avoidance of one part nullifies the other. If this partnership had not been organized there is no circumstance indicating that Respondent would have owned or been taxable upon the income from the Coon one-half interest. The case, from the standpoint of the Culbertson family, is not one of splitting income, but of the acquisition of additional property and income. The *Tower* and *Lusthaus* cases deal only with partnerships which attempt the division of income, formerly accruing to one member of the family, between two or more of its members, with the result, usually intentional of decreasing income tax liability, with no substantial change in the practical economic situation—of the family as a group or in the control of the partnership. The present case is the exact opposite. When a father, in an arm's length, good-faith transaction, assists his sons in purchasing property from someone entirely outside the family, *Tower* and *Lusthaus* do not make him liable for taxes upon the income from the property so purchased by the sons.

Nevertheless, Petitioner urges that Respondent, having paid for the Coon interest initially and not

having been reimbursed in the manner the Government conceives necessary under the *Tower* case, should be taxed upon the income from the Coon one-half interest in the cattle; but this ignores the distinguishing facts heretofore mentioned and it misconceives the true meaning of these cases. The crux of the *Tower* and *Lusthaus* cases is that a real partnership—a genuine union motivated by substantial business reasons and having economic substance—will be recognized taxwise as well as otherwise, and a partnership lacking such reality will not shield the true owner of the income from taxes; in the process of developing this central principle, the court in those cases gave consideration to factors usually indicating the presence or absence of the required reality—the artificiality of the arrangement, contributions of capital, participation in managerial functions, rendition of vital services and tax motivated diversion of income. The Court was not writing a statute and obviously the factors mentioned were not intended to be all inclusive. While this case does not fall in the *Tower-Lusthaus* catagory, W. O. Culberson & Sons was and is a real partnership; that this partnership was a genuine union motivated by substantial business and economic reasons is indicated not only by the manner of its creation, but by the partners' "conduct in the execution of the partnership provisions":[14] the Culbertson boys

[14]In the typical family partnership case the vital question is, "* * * whether the partners really and truly intend to join together for the purpose of carrying on business and sharing in the profits or losses or both. And their intention in this respect is a question of fact, to be determined from testimony disclosed by their agreement, considered as a whole, and by their conduct in execution of its provisions". *Commissioner* v. *Tower*, 327 U. S. 280 at 287.

made this partnership possible and their participation is, therefore, hardly less than vital. Whether it be labeled new capital or management participation or vital services, the Culbertson boys had enough to contribute to this partnership to cause R. S. Coon, who was in a better position to know than any one excepting perhaps Respondent, to refuse to part with his interest unless the Culbertson boys acquired that interest and took his place in the partnership. The Culbertson boys made very significant contributions: the uncontradicted testimony is that all policies were established by consultation with all partners and that Repondent did not attempt to vary the joint decisions as, indeed, he had no right to do. Of the two large functions—office work and ranch work—ranch work was basically the most essential; it is undisputed that Respondent did none of the ranch work, which was the province of the Culbertson boys; the Culbertson boys kept the breeding records and perhaps the one most essential element necessary to keep this particular business going, the breeding program, was handled exclusively by W. O., Jr., who devoted all of his time to managing the ranch. The younger brothers did not devote their whole time specifically to ranch work, but the reasons for this were entirely disassociated with the elements of a sham partnership: the partners agreed that the interests of the partnership would best be served by completing their educations and thus equipping themselves to handle the affairs of the partnership. During the tax years the younger boys worked for the partnership or served in the Army. In view of the manner in which

this partnership came into being and thereafter operated, to urge that Respondent earned the income involved in the tax years—by assisting his sons in buying out his original partner and by handling part of the office work and going to the ranch once a month—or to say that the Culbertson boys did not perform vital services or substantially contribute to the control and management of the business—demonstrates at least an inadequate understanding of the ranching business. The fact that in seeking financial assistance for the partnership Respondent, without the knowledge or agreement of the other partners, executed a void document which contained ineffective and untrue recitations does not destroy the *bona fides* of the previously valid partnership; nor is the reality of this partnership weakened in any way by the fact that a year and a half after the partnership had been in operation the Respondent, of his own initiative, forgave approximately two-fifths of the boys' note.

2. There is no tendency on the part of the Courts of Appeal to disregard the principles of the *Tower* and *Lusthaus* cases. As this Court admonished, family partnership cases—the overwhelming majority of which are husband and wife arrangements—turn on the particular facts of each case and it is, therefore, to be expected that some cases will fall on one side of the line and some on the other. But when the same Court of Appeals composed of the same Judges decides family partnership cases on the ratio of two or three or more to one in favor of the Government— and

this generalization appears to hold for practically all the Courts of Appeal—it is quite difficult to perceive any basis upon which the Petitioner can complain, supportably, of a tendency to misconstrue the principles of the *Tower* and *Lusthaus* cases against the Government. Petitioner cites as evidence of the asserted tendency four cases from the Sixth Circuit,[15] two from the Fifth Circuit,[16] and one each from the Seventh[17] and Eighth[18] Circuits, all of which were decided in 1946, 1947 and 1948; but during this same period of time, the Sixth Circuit decided fifteen family partnership cases[19] for the Government—and a combination of Judges Hicks, Allen, Martin, Simons and Miller decided all nineteen cases; the Fifth Circuit decide five;

[15] *Lawton* v. *Commissioner*, 164 F. 2d 380; *Weizer* v. *Commissioner*, 165 F. 2d 772; *Woosley* v. *Commissioner*, 168 F. 2d 330; *Canfield* v. *Commissioner*, decided July 1948.

[16] *Simmons* v. *Commissioner*, 164 F. 2d 220; *Singletary* v. *Commissioner*, 155 F. 2d 207.

[17] *Wilson* v. *Commissioner*, 161 F. 2d 661.

[18] *Durwood* v. *Commissioner*, 159 F. 2d 400.

[19] *Byerly* v. *Commissioner*, 154 F. 2d 879; *Houghland* v. *Commissioner*, 166 F. 2d 815, cert. den. 334 U. S. 846; *Dawson* v. *Commissioner*, 163 F. 2d 664; *Lowry* v. *Commissioner*, 154 F. 2d 448, cert. den., 329 U. S. 725; *Lorenz* v. *Commissioner*, 148 F. 2d 527, cert. den., 327 U. S. 786; *Thorrez* v. *Commissioner*, 155 F. 2d 791; *Canfield* v. *Commissioner*, 154 F. 2d 1016; *Livie* v. *Commissioner*, 155 F. 2d 728; *Ewing* v. *Commissioner*, 157 F. 2d 679; *DeKorse* v. *Commissioner*, 158 F. 2d 801; *Greenberg* v. *Commissioner*, 158 F. 2d 800; *Schreiber* v. *Commissioner*, 160 F. 2d 108; *MacDonald* v. *Commissioner*, 165 F. 2d 213; *Epps* v. *Commissioner*, 164 F. 2d 482; *Weinstein* v. *Commissioner*, 166 F. 2d 81.

cases[20] in favor of the Government; the Seventh Circuit decided one case[21] for the Government and one for the taxpayer; and the Eighth Circuit had only one case before it. During the same period the Second Circuit decided three cases[22] for the Government and none for the taxpayer, the Third Circuit decided three cases[23] for the Government and none for the taxpayer, the Fourth Circuit decided three cases[24] for the Government and none for the taxpayer, and the Ninth Circuit decided two cases[25] for the Government and none for the taxpayer. The tenth Circuit apparently has had no family partnership cases before it since the *Tower* and *Lusthaus* cases. According to the citator, the Tax Court has considered approximately 350 family partnership cases since the *Tower* case was decided in February, 1946; of these, approximately forty have been appealed and of the appealed cases only

[20] *Scherf* v. *Commissioner*, 161 F. 2d 495 cert. den., 332 U. S. 810; *Benson* v. *Commissioner*, 161 F. 2d 821; *Belcher* v. *Commissioner*, 162 F. 2d 974, cert. den., 332 U. S. 824; *Dawes* v. *Allen*, 157 F. 2d 518; *Morton* v. *Thomas*, 158 F. 2d 574, cert. den., 330 U. S. 834.

[21] *Appel* v. *Smith*, 161 F. 2d 121.

[22] *Seifert* v. *Commissioner*, 157 F. 2d 719; *Seibert* v. *Commissioner*, 156 F. 2d 227; *Fletcher* v. *Commissioner*, 164 F. 2d 182, cert. den., 333 U. S. 855.

[23] *Eisenberg* v. *Commissioner*, 161 F. 2d 506, cert. den., 332 U. S. 767; *Davis* v. *Commissioner*, 161 F. 2d 361; *Walker* v. *Commissioner*, 160 F. 2d 313.

[24] *Wilson* v. *Commissioner*, 161 F. 2d 556, cert. den., 332 U. S. 769; *Mauldin* v. *Commissioner*, 155 F. 2d 666; *Economos* v. *Commissioner*, 167 F. 2d 165, cert. pending.

[25] *Nordling* v. *Commissioner*, 166 F. 2d 703; *Quon* v. *Commissioner*, 165 F. 2d 215, cert. den., 334 U. S. 845.

nine, including the present case, were decided for the taxpayer. If the adjudicated cases evidence any trend or tendency it is certainly one of which Petitioner cannot complain.

A reading of the cases cited by Petitioner is the best evidence that the Courts of Appeals are endeavoring to follow and apply, rather than disregard, the principles enunciated in the *Tower* and *Lusthaus* cases.[26] Assuredly, the fact that the Government, being free to do as it pleased, did not appeal any of these eight cases, is quite immaterial.

The suggestion, implicit in the petition, of the need for a more definitive exposition of family partnership tax principles, if true, is being met legislatively. One purpose of the Revenue Bill of 1948—insofar as it authorized husbands and wives to divide their income for tax purposes[27]—was to allay family partner-

[26]In the *Lawton*, *Woosley* and *Canfield* cases, the Tax Court specifically had found that valid partnerships existed for tax purposes; in the *Simmons* case, the Circuit Court sustained the Tax Court as to the partnerships in which the husband had an interest and reversed only where the Tax Court had taxed partnership income to individuals who were not partners; in the *Singletary*, *Weizer* and *Wilson* cases, the Tax Court had found that the wife furnished capital originating with her and performed services; in the *Durwood* case, the partnership interest held by the questioned partner had not originated with the taxpayer. Citations, supra footnotes 15-18.

[27]Internal Revenue Code, Sections 12(d), 51(b). 26 U. S. C. A. Sec. 12(d) 51(b).

ship cases,[28] of which husband and wife arrangements constitute the overwhelming majority. Section 191 of H. R. 6712, the Revenue Revision Bill of 1948, as introduced in the House of Representatives by the Chairman of the Ways and Means Committee and unanimously ordered reported by the Committee on Ways and Means, contained specific and detailed provisions retroactive to 1940 governing the taxation of all family partnerships. This Bill was not reached by the last Congress, but according to the statements of the Chairman of the Ways and Means Committee appearing in the public press, it is to be reintroduced in the coming session.

## CONCLUSION

The decision below is correct. It turns upon the particular facts of the case and presents no question calling for review by this Court. There is no conflict of decisions. The petition should, therefore, be denied.

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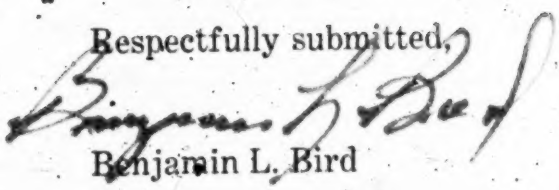
[28]Paragraph A, of Section VIII of the Ways and Means Committte Report No. 1274, H. R. 4790—the Revenue Bill of 1938—states:

"Adoption of these income-splitting provisions will produce substantial geographical equalization in the impact of the tax on individual net incomes * * *. The incentive for married couples in common law States to attempt the reduction of their taxes by the division of their income through such devices as trusts, joint tenancies, and family partnerships will be reduced materially."

Respectfully submitted,



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## APPENDIX

### INTERNAL REVENUE CODE:

Sec. 11. NORMAL TAX ON INDIVIDUALS.

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a * * *tax * * *.
(26 U.S.C. 1946 ed., Sec. 11)

Sec. 181. PARTNERSHIP NOT TAXABLE.

Individuals carrying on business in partnership shall be liable for income tax only in the individual capacity.
((26 U.S.C. 1946 ed., Sec 181.)

Sec. 182. TAX OF PARTNERS.

In computing the net income of each partner, he shall include, whether or not distribution is made to him—

* * * * * * * * *

(c) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in section 183 (b).
(26 U. S. C. 1946 ed., Sec. 182

Sec. 3797. DEFINITIONS.

(a) When used in this title, where not otherwise

distinctly expressed or manifestly incompatible with the intent thereof—

(2) Partnership and Partner.—The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

* * * * * * * * *

(26 U.S.C. 1946 ed., Sec. 3797.)